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| 09/714,367      | 11/16/2000  | Bruce B. Brandt      | 1067-242            | 5018             |

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EXAMINER

KLAUS, LISA NHUNG

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2832

DATE MAILED: 01/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/714,367

Applicant(s)  
Bruce B. Brandt

Examiner  
Lisa Nhung Klaus

Art Unit  
2832



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-35 *not dep. claims* ✓ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35 is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☒ Claim(s) 26-34 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
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- 20) ☐ Other: \_\_\_\_\_

Art Unit: 2832

### DETAILED ACTION

1. The present application does not appear to have continuing status because the date of abandonment of earlier application 09/466,938 was 8/19/2000, (no record of extension fee) which is before the filing date of the present application on 11/16/2000.

#### *Specification*

2. The disclosure is objected to because of the following informalities:

- The reference characters "340" (page 20, line 6) and "<sup>34A</sup>34A" (page 20, lines 8 and 9) have both been used to designate "the second spring".

- On page 22, line 18, the reference character "741" has been used to designate both "the <sup>740</sup>plunger" and "the head". Correction is required.

#### *Double Patenting*

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Art Unit: 2832

4. Claims 1-24 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-24 of prior U.S. Patent No. 6,020,563. This is a double patenting rejection.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Risk, Jr. et al. (US 6,020,563).

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Dzung et al. (US 5,153,391).

Dzung discloses a switch comprising:

- a first rotary switch module 11 having a first surface;
- a rotary switch support member 15 having a second surface;
- at least one first detent 48 formed on one of said first and second surfaces;

Art Unit: 2832

- a first detent washer 43 shaped to engage said at least one first detent, and having an angular position fixed relative to one of the first rotary switch module and the rotary switch support member;
- a first spring 52 positioned to bias said first detent washer against said at least one first detent.

*Allowable Subject Matter*

9. The prior art fails to show a second rotary switch module having a third surface, wherein the rotary switch support member also has a fourth surface; at least one second detent formed on one of said third and fourth surface, a second detent washer shaped to engage said at least one second detent, and having an angular position fixed relative to one of the second rotary switch module and the rotary switch support member.
10. Claims 26-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
11. Claim 35 is allowable.

*Conclusion*


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa Nhung Klaus (formerly Nhung Nguyen) whose telephone number is (703)305-0422. In the event that I am not reached, you can contact my supervisor, Mrs. Paula Bradley at (703)308-2319, or the group receptionist at (703)308-1782.

LK

Lisa Nhung Klaus

Patent Examiner - Art Unit 2832

December 19, 2001

  
P. AUSTIN BRADLEY  
SUPERVISORY PATENT EXAMINER  
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